

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EUGENE WZOREK,

Plaintiff,

v

CITY OF CHICAGO,

Defendant

84 C 9978

Chicago, Illinois

June 29, 1988

10:00 a.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE BRIAN BARNETT DUFF, Judge.

APPEARANCES:

FOR THE PLAINTIFF:

MR. EUGENE WZOREK

pro se

FOR THE DEFENDANT:

MR. CHARLES E. EX

MS. MARY L. SMITH

Corporation Counsel's Office

City of Chicago

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Chicago, Illinois

COURT REPORTER:

DOLORES BRENNAN

Official Court Reporter

1 THE CLERK: 84 C 9978 Eugene Wzorek versus City of  
2 Chicago, for trial.

3 MS. PAPUSHKEWYCH: Good morning your HONOR. My name  
4 is Darka Papushkewych. I have the supervising attorney on this  
5 case.

6 MR. EX: Charles Ex, E-x, for the respondent.

7 MS SMITH: Mary Smith, also on behalf of the respon-  
8 dent here.

9 MR. WZOREK: Eugene Wzorek on behalf of myself.

10 THE COURT: Ms. Papushkewych, are you about to try  
11 it?

12 MS. PAPUSHKEWYCH: No, I will not. I only only here  
13 to address the Court's concerns that happened during the pre-  
14 trial conference.

15 THE COURT: You don't need to. We are going to try  
16 the case. I am concerned, and it is history, but I want to be  
17 sure that everything is done right, so if you can help these  
18 lawyers get everything done right, in terms of making available  
19 personnel, witnesses -- I have a pro se defendant. I will be  
20 depending on the City, to some extent, to do things, to get  
21 things done.

22 MS. PAPUSHKEWYCH: May I address that issue?

23 THE COURT: Yes.

24 MS. PAPUSHKEWYCH: Yesterday you ordered us to pro-  
25 duce the city employees.

1 THE COURT: Make available city employees who were on  
2 your payroll, who will be called as witnesses in this trial,  
3 who have been named in the pretrial order.

4 MS. PAPUSHKEWYCH: Which Mr. Wzorek has requested.  
5 He has specifically named four persons and we have those four  
6 persons available on call, to come here and testify at Mr.  
7 Wzorek's request.

8 THE COURT: Perfect. Can't ask for anymore than that.

9 MS. PAPUSHKEWYCH: The one problem we do have is  
10 with Eugene Barnes and Charles Pounian.

11 THE COURT: If Barnes won't be here, then he should  
12 be subpoenaed. I ordered that weeks ago. I said it weeks  
13 ago. You said you couldn't try the case today because Mr.  
14 Barnes wasn't available.. I said I am going to try the case  
15 and Mr. Barnes will be available.

16 MS. PAPUSHKEWYCH: Your Honor, we have had -- we have  
17 made arrangements to make him available on Friday, and we beg  
18 the Court's indulgence to allow us to put him on on Friday at  
19 which time Mr. Wzorek would be, of course, able to cross  
20 examine him. Mr. Barnes is still in Springfield. We tried  
21 getting his home address from his wife last night. She would  
22 not give it to us. He is not a city employee. There is an  
23 affidavit on file that he is a lobbyist for Cook Whitter.

24 While Mr. Barnes has assured us --

25 THE COURT: You can find Mr. Barnes.

1 MS. PAPUSHKEWYCH: He has assured us he will be here  
2 on Friday, your Honor.

3 THE COURT: Mr. Barnes is not going to pick the day.  
4 And his wife is not going to avoid the process. I want him  
5 subpoenaed.

6 MS. PAPUSHEWYCH: Well, your Honor --

7 THE COURT: I want him available at my call, not his  
8 choice. I have said that I don't know how many times.

9 MS. PAPUSHKEWYCH: Fine, your Honor.

10 THE COURT: If Mrs. Barnes knows where Mr. Barnes is  
11 and she won't give you the address, then she is not cooperating.

12 MS. PAPUSHKEWYCH: We will try and subpoena him.

13 THE COURT: Today.

14 MS. PAPUSHKEWYCH: For today?

15 THE COURT: No, subpoena him today for this trial,  
16 and he will be available on call. Mr. Barnes is not doing any-  
17 thing essential in Springfield. Mr. Barnes may think he is  
18 doing something important in Springfield. I know Springfield  
19 like the back of my hand, and today is the 29th. Tomorrow is  
20 the 30th. Tomorrow the session is over. Everything that  
21 needs to be done by Mr. Barnes is done. There isn't a lobbyist  
22 in the world that can influence any major issue between now  
23 and tomorrow night at midnight. And, if there is, it isn't  
24 Mr. Barnes.

25 MS. PAPUSHKEWYCH: We will subpoena him, your Honor.

1 Can we give him any idea as to when your Honor would like him  
2 here?

3 THE COURT: Mr. Wzorek is going to call him, were  
4 you not?

5 MR. WZOREK: Yes.

6 THE COURT: When are you going to call him?

7 MR. WZOREK: I have got two witnesses of my own. We  
8 should be done probably today.

9 THE COURT: Then he better be here tomorrow.

10 MR. WZOREK: I would like to call him tomorrow then.

11 MS. PAPUSHKEWYCH: We have four city employees also  
12 that are on call. Will they be called tomorrow as well?

13 THE COURT: I don't know.

14 MR. WZOREK: I'll try to do it as fast as I can.

15 THE COURT: Are you going to call these four city  
16 employees?

17 MR. WZOREK: I am going to call four city people  
18 and MR. Barnes and Mr. Pounian. Six of them altogether.

19 THE COURT: How many are you calling today?

20 MR. WZOREK: Today I am going to call Mr. Goorski  
21 and Mr. Lucille.

22 THE COURT: Friday won't do us any good. We have got  
23 another matter going Friday. Goorski, how long is he going  
24 to take?

25 MR. WZOREK: Should be brief. I should think 25,

1 20, minutes at most.

2 THE COURT: You better have some of those other people  
3 ready for today then, and Mr. Barnes tomorrow. I have another  
4 trial on Friday. I was going to separate this. Mid-America  
5 is on my calendar for Friday.

6 MR. WZOREK: Your HONor, may I testify as a narrative  
7 witness?

8 THE COURT: Yes.

9 MR. WZOREK: Because no one to cross examine me. I  
10 will put myself on first then.

11 THE COURT: You may.

12 MS. PAPUSHKEWYCH: Mr. Pounian will be available  
13 tomorrow. He will be in court for Mr. Wzorek to cross examine.

14 THE COURT: Who else

15 MS. PAPUSHKEWYCH: That is all Mr. Wzorek has asked  
16 us to provide.

17 MR. WZOREK: Those six people. I tried to be as brief  
18 and fast as I could, your Honor.

19 THE COURT: Besides yourself and the other two people,  
20 who do you want today?

21 MS. PAPUSHKEWYCH: The four city employee witnesses?

22 THE COURT: How many of them? We won't need them  
23 all today.

24 MR. WZOREK: No.

25 THE COURT: How many of them?

1 MR.WZOREK: Maybe one. Make one available.

2 THE COURT: All right, make one available. Take  
3 your pick. Which one do you want?

4 MS. PAPUSHKEWYCH: You asked for Mr. Wasilewski, Mr.  
5 Yellin, Mr. Sommerford and Mr. Madia.

6 MR. WZOREK: I will take Mr. Sommerford.

7 THE COURT: Sommerford today, the other three tomorrow  
8 morning, and Mr. Barnes tomorrow.

9 MS. PAPUSHKEWYCH: We will attempt to serve a sub-  
10 poena, your Honor, on him in Springfield.

11 THE COURT: You better.

12 MS.PAPUSHEWYCH: We will do our best.

13 THE COURT: He's not going to be on on Friday.

14 MS. PAPUSHKEWYCH: We will do our best, your Honor.

15 THE COURT: Okay. And if Mrs.Barnes knows his  
16 address, then I want her cooperation.

17 MS. PAPUSHKEWYCH: We will get in touch.

18 THE COURT: He is a commissioner.

19 MS.PAPUSHKEWYCH: No, he is not. He is no longer an  
20 employee.

21 THE COURT: Anyway, he can be served and I made that  
22 crystal clear well over a week ago. Well over a week ago.  
23 Now you can serve Mr. Barnes' house today, if you have to,  
24 and you can also get somebody in Springfield to serve him.  
25 Here is no reason Mr. Barnes should not be here. Who is pay-  
ing him in Springfield?

1 MS. PAPUSHKEWYCH: Cook Whitter, your Honor.

2 THE COURT: Who are they lobbying for?

3 MS. PAPUSHKEWYCH: He is lobbying for them ,which is  
4 a private corporation.

5 THE COURT: The bill has already passed.

6 MS. PAPUSHKEWYCH: Your Honor, I just know we spoke  
7 with Mr. Barnes on the telephone last week, and he told us  
8 he could not be here before Friday; that he could come in  
9 Friday specifically for this purpose, to testify.

10 THE COURT: Tell him he has to be here tomorrow.

11 MS. PAPUSHKEWYCH: Yes, sir.

12 THE COURT: You can reach him in Springfield. Call  
13 Mr. Cook if you have to.

14 MS. PAPUSHKEWYCH: We will do our best to get him  
15 here tomorrow.

16 THE COURT: Let us proceed to trial. Do you have an  
17 opening statement, Mr. Wzorek?

18 MR. EX: Your HONor, there were a couple of motions.

19 THE COURT: What have you got?

20 MR. EX: There was a motion to bar some of the  
21 witnesses that were on Mr. Wzorek's witness list.

22 THE COURT: Of the six that he told you he is going  
23 to call?

24 MR. EX: No, they don't concern any -- except for  
25 John Lucille.



1 THE COURT: He has already told you the ones he is  
2 going to call. He has named six people. Which ones of those  
3 do you want to move to bar?

4 MR. EX: Mr. John Lucille.

5 THE COURT: Why?

6 MR. EX: Your Honor, the reason we would wish to do  
7 that, which is set forth in our motion to bar, on page 3, we  
8 were discussing certain witnesses.

9 When he had originally listed his proposed pretrial  
10 order, he listed a number of former employees who had also been  
11 terminated at approximately the same time he had, and it is  
12 the City's position that anybody who is fired at the same time,  
13 can only talk about their own particular set of circumstances.

14 THE COURT: Let us just talk about the one witness  
15 you are talking about.

16 MR. EX: Right. And Mr. Lucille was also among those  
17 employees.

18 THE COURT: Why do you want to call him?

19 MR. WZOREK: He was my foreman. He could relate to  
20 what I was rated. I am not going to call him about his case,  
21 just mine. There was rated 85.

22 THE COURT: That's relevant. The objection is over-  
23 ruled. Now what other motions are pending?

24 MR. EX: Your Honor, I would just like to move to  
25 exclude any witnesses that are in the courtroom.

1 THE COURT: All right. Joined in by MR. Wzorek?

2 MR. WZOREK: Pardon me? Would my witnesses have to  
3 wait outside?

4 THE COURT: Yes. That is so each witness can testify  
5 without being overheard by the other witnesses.

6 MR. WZOREK: I am sorry.

7 THE COURT: Don't be apologetic. Let's just move  
8 along here.

9 MR. EX: I would like to research the rest of our  
10 motion to bar to the extent he decides to call the rest of the  
11 witnesses who were subject to our motion, which were two  
12 doctors.

13 THE COURT: No problem.

14 Now, Mr. Wzorek, do you want to make an opening  
15 statement?

16 MR. WZOREK: Your Honor, I will try to do the best I  
17 can. I will try to prove I was fired politically and not for  
18 anything I did. I am going to try to prove it was a Shakman.  
19 Try to prove the probation and mandatory ruling should not  
20 have been produced.

21 What I am trying to say, when they went to the City  
22 Council to okay the probation, if they changed it, I think  
23 they violated the rules of the probation, because they didn't  
24 go back to the City Council to change that.

25 So I am going to try to show at that time I had 85,

1 and I was a good employee and shouldn't have been fired.

2 THE COURT: What does 85 mean?

3 MR. WZOREK: That is 85 percent on your rating. And  
4 one thing I would like to ask, your Honor, I had a rating card  
5 signed by Mr. John Lucille and now it is missing, and they said  
6 that the ratings are all gone. They are either thrown away  
7 or misplaced.

8 If I can prove on May 3, they shouldn't have changed  
9 the rules without going to the City Council, that 85 rating  
10 should have stood up, and because they got rid of the evidence  
11 it can't be produced. It is not my fault.

12 THE COURT: That is true. Did you ask for it?

13 MR. WZOREK: Yes, I did.

14 THE COURT: In the pretrial requests?

15 MR. WZOREK: Yes, I asked all the time. Even my  
16 first attorney asked for it.

17 THE COURT: Okay. It is in their control. They are  
18 responsible for it.

19 MR. WZOREK: You know, your Honor, on that May 3,  
20 thing, do I have to --

21 THE COURT: You should bring that up in evidence.

22 MR. WZOREK: Okay.

23 THE COURT: The question of the existence of the  
24 cards.

25 All right. Next?

1 OPENING STATEMENT BY MS. SMITH ON BEHALF OF THE CITY

2 MS. SMITH: Thank you, your Honor.

3 As you know, this is a Shakman claim. There are no  
4 other claims before the Court today. Mr. Wzorek is alleging  
5 that the City of Chicago, violated the Shakman consent decree  
6 when he was terminated from City employment from the Department  
7 of Sewers as a probationary truck driver with the Department  
8 of Sewers.

9 Since it is a Shakman claim, it is a contempt peti-  
10 tion. Mr. Wzorek has the burden of showing by clear and con-  
11 vincing evidence that he was terminated by Eugene Barnes, the  
12 Commissioner at that time, for political reasons.

13 The evidence will show that there is no evidence  
14 whatsoever that Mr. Barnes knew of Mr. Wzorek's political  
15 affiliations or activities at the time that he made the deci-  
16 sion to discharge Mr. Wzorek. There is absolutely no clear  
17 and convincing evidence that Mr. Barnes' decision to discharge  
18 him was politically motivated.

19 In late December, 1983, the City of Chicago passed  
20 an ordinance which was part of the annual appropriation  
21 ordinance for 1984, which placed approximately 8,000 city  
22 employees, including Mr. Wzorek, on probation for six months.  
23 If he successfully completed the probation period they would  
24 become career service employees on July 1, of 1984.

25 Now, Mr. Wzorek mentioned that there were some

1 mid-probationary term ratings that were done, and therefore,  
2 that he requested from the City and were not made available to  
3 him.

4 I submit that what happened, your Honor, was that the  
5 Commissioner of Personnel at that time, Dr. Pounian, issued in  
6 January of '84, a memorandum setting forth the procedure for  
7 evaluating these probationary employees. That January memoran-  
8 dum was later revoked. A second directive was issued in May  
9 in which Dr. Pounian said when the department heads were making  
10 the decisions to discharge probationary employees at the end  
11 of the probationary period, that those mid term evaluations  
12 would not be considered. They should return those evaluations  
13 to the Department of Personnel, and they were thereafter  
14 destroyed.

15 Therefore, any rating that Mr. Lucille may have given  
16 Mr. Wzorek, midterm in his probation period, is irrelevant.  
17 It was not taken into consideration. In fact, according to  
18 the personnel rules of the City of Chicago, as well as a  
19 number of cases that have come down, a probationary employee  
20 can be discharged for any reason, so long as it is not an  
21 illegal reason. In fact, the personnel rules of the City of  
22 Chicago require one prerequisite prior to discharge of a pro-  
23 bationer.. That prerequisite is that the commissioner or the  
24 department head, in this case it would be Commissioner  
25 Barnes, notify in writing to the Commissioner of Personnel,

1 Dr. Pounian, the reason for his discharge.

2 We have that memorandum. It was complied with. Mr.  
3 Barnes did, in fact, notify Commissioner Pounian of the reason  
4 for Mr. Wzorek's discharge, and therefore, all relevant rules  
5 and regulations were complied with.

6 As I stated before, Mr. Barnes was the C  
7 at the time. He was the final decision maker. Onl  
8 tion is relevant in this case as to whether or not  
9 Mr. Wzorek for political reasons.

0 THE COURT: In that case, all the more re  
1 better have him here tomorrow.

2 MS. SMITH: We are going to do everything .  
3 capability that we can, your Honor.

4 THE COURT: I would consider it very serio  
5 not here.

6 MR. SMITH: I understand that.

7 THE COURT: All right.

8 MS. SMITH: And in concluding, I would just like to  
9 say approximately 58 other employees were discharged with Mr.  
0 Wzorek from the Department of Sewers, several hundred were dis-  
1 charged citywide on the same day as Mr. Wzorek.

2 We feel the evidence will show that Commissioner  
3 Barnes had no knowledge whatsoever of Mr. Wzorek's affilia-  
4 tions or activities at the time he made the decision to discharge  
5 him in June of 1984. Thank you.

*Any argument  
Commissioner Barnes  
had no personal  
knowledge of  
Wzorek's political  
affiliations.*

1 THE COURT: Thank you. Mr. Wzorek, you may put on  
2 your evidence.

3 MR. WZOREK: Can I ask you one thing? What I was  
4 speaking about the rating cards is because Mr. Barnes had to  
5 have the rating card, and it told the Ward and the political  
6 affiliation you were on the rating card. That's why they were  
7 destroyed.

8 THE COURT: It is relevant.

9 MR. WZOREK: I wanted to show that Mr. Sommerford  
10 recommended my firing, who politically threatened me, and I  
11 got a letter stating I was fired for poor performance, but  
12 they never give me the reason, and Mr. Sommerford requested of  
13 me, and the letter was supposed to go to Dr. Pounian from  
14 Eugene Barnes. It didn't. It went from Sommerford, then back  
15 to Barnes and then Barnes sent it a day later.

16 THE COURT: Do you want to take the stand?

17 MR. WZOREK: Okay

18 THE COURT: Do you want to be under oath?

19 MR. WZOREK: Yes, sir.

20 EUGENE WZOREK PLAINTIFF SWORN

21 DIRECT EXAMINATION

22 BY MR. WZOREK:

23 Okay. My name is Eugene Wzorek, 3751 West 75th  
24 Place. I started for the city about 1973, as a motor truck  
25 driver for Sanitation. After working on and off there and

1 collecting compensation from the city when I was laid off, I  
2 joined the Sewer Department in 1977.

3 I didn't do anything that was relevant to my discharge  
4 I was also told a lot of political things when I gave Richard  
5 Daley a check for \$1000. Me and William McDermott brought it  
6 down to Daley's. After that he was transferred off my truck  
7 with me and I was warned not to, I should never donate for  
8 Daley. I was warned by Mr Sommerford.

9 MR. EX: Objection, your Honor. Hearsay.

10 THE COURT: Mr. Sommerford worked for the City at  
11 the time?

12 THE WITNESS: Yes, he did.

13 THE COURT: Objection overruled.

14 MR. EX: If I could just finish my objection. The  
15 reason I say hearsay is that although he was a city employee,  
16 I don't believe that, for purposes of this case, which he must  
17 show it was the decision maker who knew of his motivation;  
18 that by merely showing Mr. Sommerford had knowledge, could be  
19 imputed to the decision maker. There must be some showing  
20 that Mr. Sommerford had some influence or was, in fact, part  
21 of that actual decision itself, and therefore, --

22 THE COURT: Your objection was on hearsay. It is  
23 overruled.

24 THE WITNESS: Your Honor, what I was trying to say  
25 in the deposition, Mr Sommerford states that he was the one



that fired the people. You know, stamped the names and did all that.

THE COURT: What page in the deposition?

THE WITNESS: Well --

THE COURT: If you can't remember, check it later.

THE WITNESS: Okay. I know it is hearsay, but --

THE COURT: Don't decide what is hearsay. That is my job.

THE WITNESS: Okay. I was told by Mr. Sommer to straighten out in my ward; that I wasn't paying the See, a new committeeman was taking over the ward and he was --

MR. EX: Objection. Same grounds. Hearsay.

THE COURT: It is not hearsay. If Mr. Sommer is the person that fired him, the person that warned him he is the supervisor, then it is not hearsay.

Continue, sir.

THE WITNESS: Like I said, Mr. Sommerford's name on both firing slips so he was there with Barnes. If it was just Barnes alone that fired me, it would have been just Barnes' name on there. That is why I am bringing Mr. Sommerford into this. He is also on the note that requested me to be fired for poor performance. And then also, Mr. Sommerford told me about my ward because Mr. Molaro was taking over the ward. He was a lot younger man than Mr. Swinarski, so he said

W20K7C

15- 1973 note  
down for  
Summation  
16 Swear in

Warned by Sommer  
not to support  
Daley (16)

Sommerford on  
appeal on  
requesting leave

find - ~~not~~  
Note not we

(17)

1 you will have to start paying your dues over there. And they  
2 can get around the Shakman law. They have got real good lawyers  
3 downtown. He said, it is still the same game only played a  
4 different way.

5 So he says, just start behaving yourself over there.  
6 Says, let me just give you some friendly advice.

7 THE COURT: When was that?

8 THE WITNESS: That was in 1983 just before the proba-  
9 tion. It was in the First District, in that back yard.

10 THE COURT: What is the First District?

11 THE WITNESS: That is at 23d and Peoria. That is  
12 the Sewer District.

13 THE COURT: What do you mean the back yard?

14 THE WITNESS: I mean, you can go out the back way  
15 and there is like a yard in there where all the trucks are, and  
16 there is a telephone.

17 THE COURT: Who was there?

18 THE WITNESS: Me and Mr. Sommerford and Sam Keys.  
19 But he walked away then.

20 THE COURT: How do you spell Keys?

21 THE WITNESS: k-e-y-s.

22 THE COURT: Did he hear it?

23 THE WITNESS: I don't know. I don't think he will  
24 testify because they are afraid. But MR. Goorski will tes-  
25 tify to the first, where he threatened me about the \$1000.

1 He was there unloading the truck.

2 THE COURT: Goorski was present. Who else was present?

3 THE WITNESS: Just me, Goorski and MR. Sommerford.

4 THE COURT: When was that?

5 THE WITNESS: That was the first Wednesday after  
6 Columbus Day. It was in 1982, in October.

7 THE COURT: All right, continue.

8 THE WITNESS: Okay. Mr. Goorski was there on the  
9 side of the truck when he was threatening me, and Mr. Goorski  
10 was even doing this and laughing, that they were going to cut  
11 me, you know.

12 THE COURT: The witness, for the record, indicating  
13 a mark across his throat.

14 THE WITNESS: Yes. And also I have been threatened  
15 that I was going to be fired by Mr. Sommerford.

16 THE COURT: Who made this cutting motion?

17 THE WITNESS: Mr. Goorski.

18 THE COURT: He was teasing you, you said?

19 THE WITNESS: Yes, because Mr Sommerford was like  
20 facing me and Mr. Goorski was on the other side of the truck, and  
21 I was facing out. So when I was talking to Mr. Sommerford and  
22 Goorski was standing on the side, he was just like laughing,  
23 making faces that I was going to be canned the way Sommerford  
24 was talking, you know.

25 And then another time when during the truck probation

1 a truck 216 was broke down. It will be in the deposition where  
2 someone held the key to the starter. They said I did it.  
3 When I come to work two days later -- I was sick, I wasn't  
4 there that day. So Mr. Wasilewski told me, he come running out  
5 of the back of the thing, you know, he said, "You're through.  
6 You're going to be fired now. I told Sommerford to write you  
7 up and reprimand you."

8 THE COURT: Who said that?

9 THE WITNESS: Mr. Wasilewski, Judge.

10 MR. EX: Objection, your HONor. Again, hearsav  
11 ground.

12 THE COURT: Did Wasilewski work for the City?

13 THE WITNESS: Yes, he does.

14 THE COURT: Was he your supervisor?

15 THE WITNESS: Head of trucks, or something. An  
16 engineer.

17 THE COURT: Objection overruled.

18 THE WITNESS: And Mr Goorski was there at that time  
19 too because he was at the First District and I was coming in  
20 and we walked in to get my truck. I said, Hi. I didn't see  
21 him for about six months because I was transferred, you know,  
22 and after they found out I didn't break the truck, that's when  
23 I told Wasilewski, they are going to be firing guys in eight  
24 days. I said, you better tell Sommerford. He said okay. And  
25 then I asked him --

1 THE COURT: Who was there when you talked to him?

2 THE WITNESS: Mr. Goorski was there and John Weider  
3 come out. He is like the guy that went and got the trucks  
4 when they broke down.

5 THE COURT: He was there when you talked to Wasilewski.

6 THE WITNESS: It was during the same time. He come  
7 out and said it wasn't Gene that did it. It was Benas,

8 THE COURT: Who?

9 THE WITNESS: Gregory Benas.

10 THE COURT: Weider said that to whom?

11 THE WITNESS: To Wasilewski.

12 MR. EX: Your Honor, I object on grounds of hearsay.

13 THE COURT: It is not hearsay, Mr. Ex. It is in the  
14 presence of the representative of the City who was his  
15 supervisor.

16 MR. EX: I don't believe that any of those individ-  
17 uals were his actual supervisor. One of those individuals,  
18 Mr. Wasilewski was, in fact, a chief mechanic but I do not  
19 believe he was the forman or direct supervisor.

20 THE COURT: Doesn't make any difference. If was a  
21 supervisor for the City and he came in and made a threatening  
22 remark about the ability to fire Mr. Wzorek, it is not hearsay.

23 THE WITNESS: Then, your Honor, he --

24 THE COURT: Wait a minute. Mr. Weider was present  
25 during which time?

THE WITNESS: This second one about Mr. Weider would go out and tow the trucks in.

THE COURT: Who else was present?

THE WITNESS: Ron Goorski was there.

THE COURT: Who else?

THE WITNESS: That was it, and Mr. Wasil myself.

THE COURT: What did Weider say?

THE WITNESS: Weider says, "it wasn't Gene. sick that day." He said, "It was Benas." He blamed it, you know.

THE COURT: He said you weren't there?

THE WITNESS: Yes. Gene wasn't in that day. He was sick. And see, there is only two drivers that are active out of the district, so it had to be either me or him. So they knew that right away. There is only two trucks there at 74th and Western.

THE COURT: How do you spell Benas?

THE WITNESS: B-e-n-a-s. His first name is Gregory. Then I went after Mr. Wasilewski to ask him if I can have the truck because it was ready. He said no, "you can't have the truck. You are being punished. Sommerford said to punish you." I said, "What are you talking about? I didn't do it." He said, "He don't care, you are being punished anyway. We are going to teach each of those guys a lesson over there at 75th."

13<sup>th</sup> Wednesday after  
Columbus day, 1982  
Goorski present.  
much more the threat  
Sommerford (threat)  
# 119  
Wasilewski (threat)  
Trucks - An engine  
thrusting engine  
(20)

Wasilewski to  
him the truck  
"I teach it's a lesson  
at a lesson  
75th (7)

1 I said, why are you doing this to me?

2 THE COURT: What does that mean, the guys over at 75th?

3 THE WITNESS: That was the drivers over there because  
4 he said they were wrecking the trucks. Because the first  
5 thing he said to me though, your Honor, he said, "Why did you  
6 say we are lousy mechanics here?" I said, "I didn't say that."  
7 I said, "I wasn't even working that day."

8 He was real hot. When I was coming to get the truck,  
9 he come running out of the garage to confront me. I wasn't  
10 the guy that did it. I wasn't even there. I tried to explain  
11 it to him.

12 THE COURT: All right.

13 THE WITNESS: The other threat I got politically was  
14 from Mr. Madia and that happened the day after the election in  
15 1984. It was during the probation. Mr. Madia, when I come in,  
16 we didn't have no oil at 74th and Western. You couldn't get  
17 the oil so you had to go to all the other districts we were  
18 close to to get the oil.

19 So I came in the day after the alderman election  
20 and that is when Mr. Molaro beat Mr. Majursik in the 12th Ward.  
21 And I came in, stopped the truck and was signing for the oil,  
22 and I was going to the washroom. Madia called, yelled out  
23 loud, he knew I was from the 12th Ward, he yelled out to Ernie  
24 Costo, this guy that was standing there, he says, "Hey, look  
25 what happened in the 12th Ward." He said, "One of our guys

1 beat that Polack", and he said --

2 MR. EX: Objection, your Honor. Just for the record,  
3 the same continuing objection.

4 THE COURT: Who was Madia?

5 THE WITNESS: Madia was a district formen. He was  
6 in the Sixth District where I used to go get oil and stuff like  
7 that.

8 THE COURT: Who did he shout it to?

9 THE WITNESS: To Ernie Costa. He was by the door.

10 THE COURT: Who is Costa?

11 THE WITNESS: He is like a maintenance man around  
12 there, labor, takes care of the yard.

13 THE COURT: Who else could hear it?

14 THE WITNESS: Just me and Costa were there that day.

15 THE COURT: What did he say?

16 THE WITNESS: He says, "Did you see what happened  
17 yesterday?" He was saying it because I walked in. He knew  
18 who I was with. He goes, "Hev, did you see what happened in  
19 that Ward yesterday, 12th Ward? That is a Polish ward and  
20 they put the Italian guy in and knocked the Polack out."

21 THE COURT: How is that a threat?

22 THE WITNESS: Okay. I am going to finish the threat  
23 now. As I am walking in, he said, "Hev, you better really  
24 shape up. We've got a young guy now, not an old fuddy duddy  
25 like Swinarski. You will have to pay your dues and knock on



doors better ", because I wasn't paying the dues at the  
My house burned down in '83 and I just didn't have the

*day after police  
advise  
1984.*

THE COURT: What are dues?

*Molano best 1/1*

THE WITNESS: Dues were three hundred some dollars  
a year and other tickets. I just got behind because I  
pay for the clothes that I burned. I was behind a couple  
years, you know. It was in '83, so I was starting to  
800, 900 in debt. I had a kid going to high school and  
just couldn't do it. So I told them I would try to catch  
with the dues.

*+ Madras San*

*One of our guys  
that I know*

*Madras first  
foreman (2)*

*"If you will have  
your dues and  
an doors better"*

MR. EX: Objection to this line of testimony.

I believe the lawsuit concerns an allegation that he was dis-  
criminated against, or rather discharged on the basis of his  
political affiliation; that he was not a supporter or part of  
the Washington administration. I do not understand the rele-  
vance of what the 12th Ward activity has to do with whether or  
not they have any connection to the Washington administration.  
Therefore, I believe that any particular threats, as well as  
being hearsay, is also irrelevant for purposes of this law-  
suit unless he can somehow connect up Mayor Washington or  
Eugene Barnes to that 12th Ward.

THE COURT: You can argue that at the completion  
of the case. At the moment I can't say it is not relevant.

THE WITNESS: Can I try to connect it up now?

THE COURT: Yes.

1 THE WITNESS: It's all between Mr Sommerford. Mr.  
2 Sommerford was the guy looking for people to fire. Mr.  
3 Sommerford also being with Washington was killing two birds  
4 with one stone.

5 THE COURT: How do you know Sommerford was doing that?

6 THE WITNESS: Well, he mentioned Molaro and he said  
7 Madia said that the First Ward gave them workers in the morn-  
8 ing to help them win in that ward. They helped Molaro win  
9 that ward.

10 THE COURT: Who did Madia say that to and who was  
11 present?

12 THE WITNESS: He said it to me.

13 THE COURT: Who was present?

14 THE WITNESS: It was just me and Madia because Ernie  
15 Costa was walking out the door.

16 THE COURT: When did he say this?

17 THE WITNESS: That same day, your Honor, when I was  
18 telling you.

19 THE COURT: What did he say?

20 THE WITNESS: He says, you know, we are the guys  
21 that put him over the top there. He says, our Ward, the First,  
22 put him over the top. We gave him some money otherwise he  
23 couldn't have done it.

24 THE COURT: All right.

25 THE WITNESS: Then what I was trying to hook up,

1 relevant to that is, Mr. Sommerford, which I am going to prove  
2 by depositions and by precinct captain cards, and that, and  
3 plus his own testimony, he says he was in the Fourth Ward  
4 with Timothy Evans, which is a Washington backed ward, and he  
5 was in the First Ward with the other one, which he denies  
6 ever being in the First Ward, and I got his precinct captain  
7 card, assistant precinct captain card, and he was with Jane  
8 Byrne supporters, which when Molaro took over, Molaro was a  
9 Jane Byrne supporter. Swinarski left and went with Daley  
10 in the election. So I was in limbo that way. I mean, like  
11 another guy was taking over. And since I gave the thousand  
12 dollars and then I couldn't pay my dues, I knew, you know.  
13 And I knew about Sommerford, which way he was turning. So I  
14 knew I crossed them but I figured, you know, I was doing the  
15 best I could. I didn't do anything wrong.

16 It was in their summary judgment they said I had  
17 seven and two-thirds days off, and you've got to have 10. And  
18 I figured it was over three years before I got fired. That's  
19 really a long time before starting procedure to fire somebody.

20 And the doctor, I had a doctor's order. I went  
21 home sick, and that, and I gave it to the City, the original,  
22 and I got a copy of it. So I really didn't have no charges  
23 against me. I couldn't understand what the problem was for  
24 firing me if it wasn't politics.

25 THE COURT: Do you have some documents you say you

1 want to introduce in evidence?

2 THE WITNESS: Well, I would like to have my doctor's  
3 note and that would show a day they told me I was docked for  
4 not obeying an order in 1982, I was under doctor's care. I  
5 went to the doctor. I was sick.

6 I know I'm not good at this, but I'll try.

7 THE COURT: What else?

8 THE WITNESS: Well, what I am saying about what they  
9 are talking about the probation, what I am saying is you have  
10 a probation -- this is what I believe -- and if you go to  
11 City Council to get it passed, wouldn't you have to go to the  
12 City Council to get the rules changed?

13 THE COURT: I don't know what you mean.

14 THE WITNESS: They had a probation. They sent out  
15 a memorandum, and it said you had to have two ratings to pass  
16 and stuff like that, and the City Council okayed this.

17 Now, May 3, they changed that whole rule around.  
18 They didn't go back to the City Council to get it changed.

19 THE COURT: What difference does it make if they  
20 changed it on May 3?

21 THE WITNESS: Well, your Honor, because if most  
22 of the people are passing and you can't get no jobs, you have  
23 to go get the jobs some other way because you know, during  
24 the probation everybody is going to be minding their P's and  
25 Q's. So if all of a sudden you discover when you get the

1 rating and you check it out you haven't got the jobs you are  
2 supposed to get.

3 THE COURT: You said your rating --

4 THE WITNESS: Was 85. My rating was 85 and John  
5 Lucille will testify to that, and he even says in their docu-  
6 ments with Mr. McGee, and that, if you get over 85, they  
7 ought to rate why you're good.

8 THE COURT: How did they change the rules?

9 THE WITNESS: There was no more ratings. She even  
10 said when she was making her opening statement.

11 THE COURT: Was there something published to that  
12 effect?

13 THE WITNESS: On May 3, yes, there was a memorandum.

14 THE COURT: Do you have a copy of it.

15 THE WITNESS: Yes, I got a copy of it.

16 THE COURT: Are you going to put that in evidence?

17 THE WITNESS: Yes, if I could. And then -- well,  
18 besides that point, I want to put in evidence too is when we  
19 depositioned Mr. Pounian, he never mentioned May 3. All he  
20 says is there is two ratings going on, and they are going on  
21 until today, to the day he was in office. He says even dur-  
22 ing the probation there were four ratings, the regular two a  
23 year and two --

24 THE COURT: He said that?

25 THE WITNESS: Yes, sir. It is in the deposition

1 from page 23 all the way to the end. He never the May 3,  
2 change.

3 THE COURT: Who issued the May 3 memorandum?

4 THE WITNESS: Charles Pounian. That is what I can't  
5 understand. How can he say that in mine, and in theirs he  
6 issues a memorandum that they changed the rules. And we got  
7 the whole deposition to show this, and he gives the reason for  
8 the ratings, and stuff like that. So I can't understand what  
9 is going on.

10 MS. SMITH: Your Honor, if I may interject. The  
11 witness has complete misrepresented the statements in Mr.  
12 Pounian's deposition.

13 THE COURT: Well, we will see when Mr. Pounian takes  
14 the stand. He can be asked the question directly, and then  
15 if he doesn't answer it he can be impeached with it.

16 MS. SMITH: That is fine.

17 THE WITNESS: Mr. Sommerford says he was never in  
18 the First Ward and I got his precinct captain card right in  
19 my pocket, if I can present it now. So I don't lose it.

20 THE COURT: You can.

21 THE WITNESS: So I don't lose it. So I figure if he  
22 is saying that kind of stuff, I guess that is a lie.

23 Also, they gave an exit interview to me, and you  
24 are supposed to turn in your I.D. card, and everything? I'm  
25 still waiting for my exit interview and they have got it down

1 there as though I got one.

2 THE COURT: Still got your I.D. card?

3 THE WITNESS: Yes. Still got a helmet at home too.  
4 I'm still waiting to get it.

5 THE COURT: What is this? The I.D. card?

6 THE WITNESS: Yes.

7 THE COURT: Any objection?

8 MR. EX: May I take a look at it, your Honor?

9 THE COURT: It is an I.D. card.

10 THE WITNESS: And this is William Sommerford's  
11 precinct captain card. He said he never politiced in the  
12 First Ward.

13 THE COURT: Any objection?

14 MR. EX: What is that?

15 THE COURT: Sommerford's precinct captain card.

16 MR. EX: We would object to that on two grounds.  
17 One, we were just made aware of that just a matter of a  
18 couple of days ago, and second, as to no foundation as to  
19 where he got that.

20 THE WITNESS: I'll explain where I got it if you  
21 want. Plus, they were given copies of this already.

22 THE COURT: Where did you get it? When were they  
23 given copies?

24 THE WITNESS: All the time. That's why my first  
25 lawyer, he had all this stuff and wasn't producing it.

1 MR. EX: Your Honor, I would like to object to  
2 that, to the extent the problems he has with his lawyers, I  
3 don't believe is evidence in this case.

4 THE COURT: He said you were given copies of it.

5 THE WITNESS: It was attached to our thing too.

6 THE COURT: What do you mean, attached to our things?

7 THE WITNESS: The thing we were filing on the briefs  
8 from before. They attached William Sommerford's card. Ms.  
9 Karajonis had that stuff when we first started the case. I  
10 know what we gave her. She is the one who was giving me the  
11 deposition.

12 THE COURT: Where did you get it?

13 THE WITNESS: Mr. Lucille got that from Mr. Sommerfor  
14 during the probation in case he needs any help.

15 THE COURT: Who is Mr. Lucille?

16 THE WITNESS: He is my witness. That was my  
17 supervisor.

18 THE COURT: He got this?

19 THE WITNESS: Yes, during the probation.

20 THE COURT: Then you will have to ask him that.

21 THE WITNESS: Okay.

22 THE COURT: How did you get it?

23 THE WITNESS: He gave it to me for my court day.

24 THE COURT: Which court day?

25 THE WITNESS: He gave it to me to have as evidence



1 for myself.

2 THE COURT: You will have to ask him about it.

3 THE WITNESS: Ask him the question, yes, but I just  
4 wanted to show that I had it.

5 THE COURT: Okay, sustain the objection at this  
6 time. No foundation You can ask Mr. Lucille about it. I  
7 will take the I.D. card in evidence at this time. You won't  
8 need this?

9 THE WITNESS: No, I am not working.

10 (Plaintiff's exhibit, I.D. card was received in  
11 evidence.)

12 THE COURT: Go ahead.

13 THE WITNESS: The exit interview, like I say, your  
14 Honor, it gives an affidavit memoranda. Every employee  
15 is supposed to get an exit interview, and I never got one.  
16 They put the wrong district foreman on the exit interview.  
17 It is totally phoney. I mean, I was never there. Never got  
18 it because it states in the, that I will produce later, that  
19 you are supposed to get an exit interview from your supervisor.

20 THE COURT: Produce it now. Why later?

21 THE WITNESS: Well, I have got it in my papers. I  
22 didn't know if I could do it or not.

23 THE COURT: Get your papers up here. You are putting  
24 your case on. If you have any documents you want to put in  
25 evidence, put them in, if your testimony is important. If

1 somebody else's testimony is important to them --

2 THE WITNESS: I can do it later when they come on.

3 THE COURT: Put on what you have to put on now, and  
4 then -- you don't know what the other side is going to tes-  
5 tify to. You put on your case and let them put on their case.

6 THE WITNESS: I meant my later witnesses could  
7 bring it out.

8 THE COURT: They may not be the right witness. If  
9 you have evidence, put it in. If you can't get it in we will  
10 see if some other witness can testify to it.

11 THE WITNESS: I gave them a copy. Didn't I attach  
12 it to the documents?

13 MR. EX: I'm sorry. Which?

14 THE WITNESS: The exit interview.

15 MR. EX: Your Honor, I just would like to point out  
16 I know that particular document I know was tendered as part  
17 of our exhibits. I know we gave you a copy of that.

18 THE COURT: Which document?

19 MR. EX: That would be marked as Respondent's Exhibit  
20 No. 22.

21 THE COURT: Exit interview?

22 MR. EX: That's right. There was no dispute.

23 THE COURT: No objection. It is in evidence.

24 (Respondent's Exhibit 22, was received in evidence.)

25 THE WITNESS: I was wondering if I could put the

1 doctor's note in too that they are trying to say I had a dock  
2 for certain days, and I was sick. I don't have the original  
3 because I gave it in at the time I was coming back to work.

4 THE COURT: Gave it in to who?

5 THE WITNESS: Mr. Maurice O'Connor.

6 THE COURT: Who is he?

7 THE WITNESS: He used to be the foreman at that time  
8 when this happened.

9 THE COURT: When what happened?

10 THE WITNESS: When this dock was supposed to occur.

11 THE COURT: I thought Sommerford --

12 THE WITNESS: No, this was back in 1982. I don't  
13 know if you will allow that to be in, but that is the dock I  
14 got.

15 THE COURT: You mean you were docked?

16 THE WITNESS: And I was sick. I went home sick  
17 and you can see the doctor's note and that is one of the docks  
18 they are talking about.

19 MR. EX: We would object to any of the notations from  
20 the doctor on two fronts. One, again, we just received a copy  
21 of that doctor's note, and No. 2, again, lack of foundation.

22 THE COURT: When did they get a copy of this?

23 THE WITNESS: Ms. Karanjonis had one when she gave  
24 me the deposition. This was back in 1985.

25 THE COURT: Did she use it in the deposition?

1 THE WITNESS: Yes, I told her I was sick. They came  
2 up and used that thing against me. I said I got the doctor's  
3 note. I was sick. It says it in the doctor's note.

4 THE COURT: Did you give them the doctor's note?

5 THE WITNESS: Yes, I gave Mr. Schroeder the doctor's  
6 note and he put it in.

7 THE COURT: I will accept it.

8 THE WITNESS: And here is where he changed the rules,  
9 May 3. I just want to show you. They first had the one proba-  
10 tionary rules and then they come with this on May 3.

11 THE COURT: Are you numbering this as one of  
12 your exhibits?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: You have got to have some order here.

15 MR. EX: It is very difficult for us to follow.

16 THE COURT: Yes, it is. Let us start off with a  
17 list so we keep a record for the court reporter. Mr. Wzorek  
18 wouldn't be expected to know how to do this, but we do have  
19 to keep a record. I am going to call --

20 THE WITNESS: I am sorry. I am nervous. I don't know  
21 what I am doing.

22 THE COURT: Don't worry about it. We all know y  
23 are not a lawyer. Plaintiff's Exhibit 1, is the I. D. card  
24 Plaintiff's Exhibit No. 2 is the City of Chicago notice o  
25

EXH.

1 provisional dock. Plaintiff's Exhibit No. 3 is the letter that  
2 he gave to --in the deposition. It purports to be a letter  
3 from Harold Weiss M.D. -- copy of a letter from Harold Weiss  
4 M.D. He says he gave the original in.

5 MR. EX: We would object again, your Honor, on the  
6 grounds of foundation. We don't know whether the doctor  
7 actually ever sent that or whether anybody in the City ever  
8 received it.

9 THE COURT: Well, he says he gave it at the deposition

10 MS. SMITH: If I may interject one other thing.  
11 We spent approximately three hours last night with Mr. Wzorek  
12 going over the pretrial order. We discussed in detail what  
13 exhibits he would use, what exhibits we would use. That  
14 doctor's note was never once mentioned by Mr. Wzorek.

15 THE WITNESS: This was already put in a long time  
16 ago.

17 MS. SMITH: No, it wasn't. It was not part of his  
18 original submission.

19 THE COURT: Well, he doesn't understand that. You  
20 asked him for it at the deposition. He gave it to you at the  
21 deposition. He has a right to believe that you have it. I  
22 am going to accept it. This is No. 3.

23 MR. EX: I want to point out when he gave it to  
24 the City for the deposition, that was no where near the point  
25 in time when those actions were occurring.

1 THE WITNESS: But you are bringing them up as charges  
2 against me. I have to defend myself.

3 THE COURT: Excuse me. You don't address him  
4 directly, Mr. Wzorek.

5 THE WITNESS: Well, what I am trying to say, they  
6 brought it up as a charge. I just showed I was sick. I have  
7 a right to show.

8 THE COURT: Yes. If you can get an affidavit from  
9 the doctor, do it.

10 THE WITNESS: Okay. He says to call him at any  
11 time, if anybody wants him. They can call him.

12 THE COURT: You call him. Tell him to either come  
13 down or give you a sworn affidavit.

14 THE WITNESS: Okay. And that is the May 3, thing.

15 THE COURT: I will accept 3, provisionally.

16 Now, I have the May 3 memorandum from Charles Pounian  
17 which purports to be signed by him, to Department heads  
18 regarding rating system for probationary period service  
19 employees, consisting of three pages. That will be Plaintiff's  
20 Exhibit 4. May 3, 1984.

21 MR. EX: Your Honor, may I approach the podium? It  
22 is very difficult for us to hear him from back there.

23 THE COURT: Yes, I mind. You can hear him. If he  
24 is not speaking loudly enough ask him to speak up.

25 MR. EX: Judge, if I could request him to speak up.

1 THE COURT: Yes, Speak a little louder.

2 MR. EX: Thank you, your Honor.

3 THE COURT: Do I understand then that you say this  
4 thing of Mr. Pounian's is a change in --

5 THE WITNESS: In the first order they got January 10,  
6 1984,

7 THE COURT: Which was based on the ordinance of  
8 December 27.

9 THE WITNESS: Right. That is the one they went to the  
10 City Council to get approved, and then this is a change made  
11 on May 3.

12 I don't understand how you can change the rules  
13 during a probation. Doesn't make no sense. And if he went to  
14 the City Council and notified the workers at first, how come  
15 he didn't notify the workers the second time they went to  
16 the City Council to change it?

17 THE COURT: All right. It is in evidence. That is  
18 No. 4. Go ahead.

19 THE WITNESS: Now the note, back when I wrote you  
20 the letter and I wrote the city a letter --

21 THE COURT: I can't take that as evidence.

22 THE WITNESS: All right. But I gave them the note  
23 then.

24 THE COURT: You gave them what note then?

25 THE WITNESS: The doctor's note too.

THE COURT: All right.

1 THE WITNESS: All right. In the summary judgment the  
2 they blame me for seven and two-thirds days off. That is  
3 absenteeism; all right. And this, it shows I am fired for  
4 poor performance, and poor performance and absenteeism are  
5 two different things, two different charges.

6 THE COURT: What is this?

7 THE WITNESS: This is the status and reason report  
8 given out by the city after people were fired and why they  
9 were fired. And it shows the number, like 2,18. And they  
10 fired me for poor performance but the only thing they said  
11 in 1984, I had seven and two-thirds days off. That's  
12 absenteeism.

13 THE COURT: 18 is absenteeism.

14 THE WITNESS: Yes. And on the last page, that's 2,  
15 that's poor performance. So they changed charges on me.  
16 And not only that --

17 THE COURT: Now this is a copy of what?

18 THE WITNESS: Of the status and reason report why  
19 people were fired.

20 THE COURT: Who issued it?

21 THE WITNESS: The City gave it to the lawyer. We  
22 got it from the lawyer.

23 THE COURT: All right. Plaintiff's 5. 5 is admitted.

24 THE WITNESS: In my summary judgment response by  
25 Mr. Harry Schroeder, it says that the City did not produce --



1 THE COURT: What is that?

2 THE WITNESS: The response to the summary judgment  
3 when the City filed the summary judgment. Harry Schroeder --

4 THE COURT: Who is he?

5 THE WITNESS: That was the first lawyer I had, com-  
6 plained that they did not produce that until almost the summary  
7 judgment, and discovery was supposed to have been closed at  
8 that time in July.

9 THE COURT: I don't see why that has anything to do  
10 with it.

11 THE WITNESS: Okay. I thought I would tell you  
12 because I don't know. I am just trying --

13 THE COURT: All right.

14 THE WITNESS: As far as it goes they were bringing  
15 up in this latest complaint a new charge about breaking down  
16 a truck, or tearing up a truck.

17 THE COURT: What do you mean this new charge?

18 THE WITNESS: Well, they bring in new witnesses  
19 which I objected to, but I don't know if you agree with it.

20 THE COURT: I haven't had a chance to rule on it yet.

21 THE WITNESS: Okay. They said I tore up a truck, or  
22 something. They didn't put it in the summary judgment, or  
23 anything like that.

24 THE COURT: They didn't plead it?

25 THE WITNESS: Not in the summary judgment.

1 THE COURT: Were you given the name of the witness  
2 in advance?

3 THE WITNESS: No, they didn't tell me nothing. They  
4 didn't tell me who is the witness yet.

5 THE COURT: When did this come up?

6 THE WITNESS: This just came up in the last day.  
7 It happened when I got the thing on Monday.

8 THE COURT: You save that and object when they try  
9 to put on those witnesses.

10 THE WITNESS: Because I didn't know about that, and  
11 they have --

12 THE COURT: If those witnesses get on and they say  
13 something you haven't put on in your case in chief, you will  
14 be given an opportunity to rebut it. If they get on. But  
15 you can raise your objection before they get on.

16 Let us go on to other things.

17 THE WITNESS: Well, the most I can say is I believe,  
18 like they are saying that Barnes is the guy that fires you.  
19 But Sommerford's name is on the firing slip too. Then he has  
20 to be responsible too, not just the commissioner, or why have  
21 his name on there at all if it's only the commissioner.

22 MR. EX: Objection, as to the statement

23 THE COURT: It sounds like argument.

24 THE WITNESS: Well, sorry about that.

25 THE COURT: I will sort it out.

1 THE WITNESS: That's why I was saying Sommerford is  
2 the name. Sommerford is on every one of the things that  
3 recommends me to be fired. And like I said, if they would  
4 produce the rating cards and they have ward cards that are  
5 filed in the district, you would know what ward everyone is  
6 from.

7 MR. EX: I am sorry. We are having a little problem  
8 hearing, and he is speaking a little rapidly in speed, and  
9 his tone makes a difference.

10 THE COURT: Don't talk at the same time at each  
11 other because the court reporter is as good as any I have ever  
12 had but she can't take three people at once, except I know  
13 who she is going to take down when I am talking .

14 THE WITNESS: What I am trying to say, the rating  
15 cards, or rating slips --

16 THE COURT: Mr. Wzorek, you do speak a little  
17 quickly and Ms. Brennan has to be able to get down what you  
18 say.

19 THE WITNESS: Sorry about it. It is just a bad  
20 habit.

21 THE COURT: Just try to slow down.

22 THE WITNESS: I will try.

23 THE COURT: Relax.

24 THE WITNESS: Another thing is that I tried to  
25 produce in evidence the note, is that they say you are not

1 supposed to destroy any evidence to any prior record. Now,  
2 even if the rating slips were taken out and they changed  
3 the rules, they're supposed to be kept there for several years,  
4 to 10 years.

5 Mr. Pounian states that, that they are there. If  
6 they got rid of those --

7 THE COURT: Where does Mr. Pounian state that?

8 THE WITNESS: In his deposition, which I will produce  
9 And Mr. Pounian states they are supposed to be 10 years.

10 THE COURT: You will get to ask Mr. Pounian that  
11 when you put him on the stand. If he says it, okay. If not,  
12 you can use the deposition to show what he said before.

13 THE WITNESS: The point is on these rating slips  
14 states the ward. They have had the ward on all the rating  
15 slips, all the time until 1986, November. Thanksgiving they  
16 changed them, and that would show anybody who was rating  
17 knows what ward you are from.

18 MR. EX: Objection. Foundation as to the statement  
19 they had any of those notations of wards up to 1983.

20 THE COURT: How do you know that??

21 THE WITNESS: How do I know? Because I signed  
22 them, my boss signed them. As a matter of fact, Mr. Madia  
23 said there were rating slips, and about the wards we can bring  
24 in three or four people. They always had the wards on them.

25 THE COURT: Bring them in.

1 MR. EX: Objection. Hearsay as to what Mr. Madia  
2 said. THE COURT: Bring him in.

3 THE WITNESS: When I get him on the stand I can  
4 question him about that too.

5 THE COURT: Yes.

6 THE WITNESS: Okay. And like I said, my boss signed  
7 them And the ward is definitely in the righthand corner in  
8 big, black type.

9 THE COURT: You've seen it?

10 THE WITNESS: Well, I signed it, yes. It's always  
11 been there, and I've seen it on the rating slip when I signed  
12 it for '85.

13 THE COURT: On yours?

14 THE WITNESS: Yes, sir.

15 THE COURT: See it on anybody else's?

16 THE WITNESS: I seen it on the guys that were stand-  
17 ing in line. When we were signing the rating slip they would  
18 call you in. They all had the wards on them. We even had  
19 ward cards that they had in every district, and we'll be able  
20 to produce them, which shows the wards.

21 THE COURT: You are going to produce them?

22 THE WITNESS: Yes.

23 THE COURT: Who is going to put them in?

24 THE WITNESS: Mr. Lucille will put them in because  
25 he was the supervisor.

1 MR. EX: Objection to the foundation. We don't even  
2 know what years he is talking about, or who he is talking  
3 about.

4 THE WITNESS: These are there at all times. Done  
5 every year. Testify to what ward you are from, your age,  
6 your birthday. Even got your precinct on it. So can't be more  
7 political than your precinct. They are on the ward cards.  
8 we got those.

9 THE COURT: You've got them?

10 THE WITNESS: Yes, Mr. Lucille put them in because  
11 he was the boss and he was the one who would take care of  
12 that. So he'll put that in.

13 THE COURT: All right.

14 THE WITNESS: So, like I say, when they say they  
15 don't know what ward you are from or not, that is unbelievable.  
16 That's just my opinion. You will have to decide on it your-  
17 self, your Honor. But they know where they are from.

18 MR. EX: Objection.

19 THE COURT: Sustained.

20 THE WITNESS: Sorry. I'm trying like hell.

21 THE COURT: You are doing all right.

22 THE WITNESS: How can I say this. They come and  
23 accuse you for breaking down trucks. And like he even stated,  
24 counsel, that they're not this, they're not that. They are  
25 engineers. How can they say who broke down a truck if they

1 are not mechanics?

2 MR. EX: Objection to that.

3 THE COURT: Overruled.

4 THE WITNESS: I can't figure that out. No one is  
5 a mechanic there. See, in the Sewer Department, your Honor,  
6 there really are no mechanics. They are engineers doing a  
7 mechanic's job. So actually they are not really qualified  
8 either to tell who breaks down what. Trucks break down all  
9 the time.

10 MR. EX: Objection, your Honor, to foundation.

11 THE COURT: What has that got to do with it?

12 THE WITNESS: That is when they say I was breaking  
13 down trucks. See, they have got to give a reason for firing  
14 you, so they try to bum rap you. And these guys --

15 THE COURT: Are they going to come in and testify?

16 THE WITNESS: I don't know who they are going to  
17 bring in.

18 THE COURT: If they do you can cross examine.

19 THE WITNESS: Okay. I will try.

20 The rating card was the most important thing to me  
21 because if they can't change that probation, that probation  
22 should have been ended there because they couldn't go to the  
23 City Council. And it was up to them. They knew I started a  
24 lawsuit before a year after I was fired

25 So, in other words by getting rid of that rating

1 slip, that knocked off the ward.

2 THE COURT: What was your job?

3 THE WITNESS: I was a truck driver, your Honor.

4 THE COURT: How much did you get paid?

5 THE WITNESS: I was paid \$14.30 a hour.

6 THE COURT: How much does that add up to a week?

7 THE WITNESS: Adds up to about, roughly \$600, \$700.

8 We got paid every two weeks so we would take home anywhere  
9 from \$700 to \$800. We didn't get paid by the week, so if there  
10 was like nine days in a work period it varied. You couldn't  
11 actually say what you would get.

12 THE COURT: How much would you make in a year?

13 THE WITNESS: In a year you would make about \$29,000.

14 THE COURT: Have you got a tax return for that year?

15 THE WITNESS: My wife has.

16 THE COURT: Bring it in.

17 THE WITNESS: Okay. And I was out for four years.

18 MR. EX: Your Honor, I would object --

19 THE COURT: Object to what?

20 MR. EX: To the tax returns. We have not had any of  
21 those documents either turned over to us, or have --

22 THE COURT: Did you ask for them?

23 MR. EX: Yes, your Honor. We asked for them prior  
24 to trial.

25 THE COURT: Show me when you asked for them.



1 MR. EX: Well, your Honor, I believe it was requested  
2 approximately a week or two before this trial started.  
3 Supplemental interrogatory questions to try and determine  
4 what damages he feels he has suffered.

5 THE COURT: I think if you only asked last week, that  
6 is pretty late. Objection overruled.

7 MR. EX: I would also object on the grounds that  
8 he never put it on his list of exhibits when we were going  
9 over them.

10 THE COURT: I just asked him for it.

11 THE WITNESS: Your Honor, Mr. Mitchell, the last  
12 attorney I had, had my tax return. That is why I couldn't  
13 even do nothing with them even if somebody asked. I'll try to  
14 get it from him. I couldn't get all my stuff

15 THE COURT: Can you get it?

16 THE WITNESS: Okay, I'll try. Is it all right if I  
17 get it, because I might owe him some money.

18 THE COURT: Yes. You tell him I want it.

19 THE WITNESS: Okay. I couldn't get all the stuff  
20 because he told me I couldn't get the stuff unless I paid him.

21 THE COURT: Not so. Not so. If he tells you that,  
22 you tell me tomorrow morning first thing.

23 Now, what date did you get fired?

24 THE WITNESS: June 29, 1984.

25 THE COURT: What are you doing now?

1 THE WITNESS: I couldn't get a job.

2 THE COURT: You tried to get a job?

3 THE WITNESS: Yes.

4 THE COURT: Where did you try?

5 THE WITNESS: All kinds of trucking places. I went  
6 to places, a bunch of places. Then I got sick because I was  
7 depressed.

8 THE COURT: What do you mean, you got sick?

9 THE WITNESS: Well, I couldn't get a job.

10 THE COURT: Did you go to the hospital?

11 THE WITNESS: I didn't have no hospitalization, so  
12 I had to be under doctor's care.

13 THE COURT: What doctor?

14 THE WITNESS: Dr. Borden.

15 THE COURT: Are you going to bring him in as a witness?

16 THE WITNESS: They said I can't have him.

17 THE COURT: Who said?

18 THE WITNESS: They objected to it.

19 MR. EX: Yes, your Honor. That is one of the witnesses  
20 that is subject to our motion to bar, as set forth in the  
21 motion.

22 THE COURT: Have I ruled on it?

23 MR. EX: Judge, I believe in June of 1984, the City  
24 filed a motion to strike all the allegations of his Shakman  
25 petition concerning any physical or psychological, or any

1 emotional damages, and Judge Decker granted that motion. Pur-  
2 suant to that order any testimony about his physical, mental  
3 or emotional state is irrelevant under the Judge's ruling.

4 THE COURT: Why did Judge Decker grant that?

5 MR. EX: He granted that on the basis of our motion  
6 to strike.

7 THE COURT: What was the basis of your motion to  
8 strike?

9 MR. EX: Basis of the motion to strike, your Honor,  
10 was that under some case law that we had found, it was held  
11 that under a contempt proceeding, which is what the Shakman case  
12 is about, that such damages were not recognized, and Judge  
13 Decker granted our motion to strike on that basis. There was  
14 no motion for reconsideration after that order, which I believe  
15 was entered on June 19, 1986, at which time the petitioner was  
16 represented by counsel. We can provide a copy of that order  
17 and the motion to strike, if you so wish.

18 THE COURT: That is as respects damages, right?

19 MR. EX: As it effects damages, yes. I believe the  
20 allegations that were stricken were concerning the types of  
21 mental, physical and emotional damages that he was suffering.

22 THE COURT: As respects damages.

23 MR. EX: Well, I assume -- I can only assume that is  
24 what he was alleging.

25 THE COURT: Then we won't accept them as far as

1 damages to him, but we will accept it as evidence of his in-  
2 ability to get a job.

3 THE WITNESS: When I had the first lawyer he told me  
4 he was going -- Judge Decker told him to come a different way  
5 with it. He said he was going to do but he wouldn't do it, or  
6 something. He just didn't do it. Because some of my stuff --

7 THE COURT: We can't accept it under Judge Decker's  
8 ruling on the terms of how much those doctors cost you, or  
9 any pain and suffering you had, but if you want to bring the  
10 doctors in and testify that you were not able to work, you may.

11 THE WITNESS: Okay. I will get in touch with them.

12 MR. EX: Your Honor, just so the record is clear, we  
13 would still object to the presentation on the grounds that  
14 none of those experts had been previously disclosed to us.

15 THE COURT: They are not experts. They are treating  
16 physicians.

17 THE WITNESS: They were supposed, you know when I  
18 was talking to my first attorney, that's what happened. He  
19 start losing stuff, and like you were thinking that I was de-  
20 laying it, and it wasn't. That's why I got rid of him.

21 THE COURT: Who was it?

22 THE WITNESS: Schroeder, because he was telling me  
23 that you were a new judge, and that it might take 10 years,  
24 and stuff like that. And then I found out that some of my  
25 stuff was missing and changed.

1 THE COURT: Keep going.

2 THE WITNESS: Like that provisional dock you got,  
3 that is not the original one, because on the original one  
4 there was like a squiggle on it, and it was to refer to a name,  
5 and when I asked Harry for it again when I got by the summary  
6 judgment, it was a changed one. So I knew what was going on,  
7 and even when I talked to Schroeder on the phone telling him  
8 I know what you done, he told me the City forged your stuff,  
9 not him. That's why I had to get rid of him.

10 MR. EX: Object.

11 THE COURT: Sustained.

12 MR EX: No evidence.

13 THE WITNESS: I'm just saying what he was saying.  
14 I had to get rid of him. Then I got --

15 THE COURT: He is not speaking to the truth of the  
16 matter. He is just saying what that one man said to him, but  
17 it isn't relevant.

18 THE WITNESS: Okay.

19 THE COURT: What else?

20 THE WITNESS: And Mr. Mitchell, I was going to have  
21 him on my case but he didn't do anything for 90 days.

22 THE COURT: We don't need to know about that.

23 THE WITNESS: I just wanted you to know why so you  
24 weren't mad at me for taking so long.

25 THE COURT: That is not at issue here.

1 THE WITNESS: Okay. Well, your Honor, I don't know  
2 what to say. The only thing I can say is that I know it was  
3 Sommerford that requested my firing.

4 THE COURT: Have you got any other documents to put  
5 in?

6 THE WITNESS: No, sir.

7 THE COURT: Have you got the documents that Sommerford  
8 signed?

9 THE WITNESS: Yes.

10 THE COURT: Where are those?

11 THE WITNESS: That exhibit J, in the thing.

12 THE COURT: Let me see all your exhibits.

13 (Tendered to the Court.)

14 THE COURT: We are going to break for lunch right  
15 now. We will break for one hour until 1:30

16 (Whereupon at 12:30 p.m., a recess was had until  
17 1:30 p.m. this same day.)  
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